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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**Policies and Rules for the
Direct Broadcast Satellite Service**

IB Docket No. 98-21

COMMENTS OF THE COALITION FOR SATELLITE COMPETITION

The Coalition for Satellite Competition ("Coalition")¹ submits these comments in response to the above-referenced Notice of Proposed Rule Making ("DBS Notice").² The Coalition supports the Commission's proposal to simplify the existing direct broadcast satellite ("DBS") rules. Streamlining regulatory requirements will provide substantial public benefits by granting satellite providers the flexibility required to respond to dynamic changes in consumer demands. To ensure these goals are met, however, the Coalition urges the Commission not to apply DBS-specific regulations to non-DBS services provided on frequencies available for DBS use.

The Coalition addresses only one issue in the DBS Notice: The Commission should confirm that the proposed change to the definition of DBS is intended to preclude the application of DBS-only rules and restrictions to traditional non-DBS services, regardless of the frequency

¹ The Coalition consists of companies with interests in satellite facilities and consumer technologies. Its objective is to promote regulatory policies that maximize the availability of new competitive satellite-delivered services for the benefit of consumers in the United States.

² *Policies and Rules for the Direct Broadcast Satellite Service*, IB Docket No. 98-21, FCC 98-26 (Feb. 26, 1998) ("Notice of Proposed Rulemaking") ("DBS Notice").

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used to provide such services. By narrowly construing the proposed definition, the Commission would maximize competition for a variety of non-DBS satellite services in the United States consistent with the World Trade Organization (“WTO”) Basic Telecom Agreement,³ promote spectrum efficiency in the delivery of innovative and cost-effective services, and preserve the Commission’s historic approach of defining services according to functionality rather than frequency or facility.

I. DBS Should Be Defined By the Nature of the Service Received Directly by the General Public Rather than the Frequency By Which It Is Delivered

Since the beginning of U.S. DBS in 1982, the FCC’s definition of the service has mirrored the International Telecommunication Union’s (“ITU”) definition for Broadcast-Satellite Service (“BSS”). The U.S. and ITU definitions are based on the *type of service* rather than the *spectrum used* to provide the service. Thus, DBS/BSS is:

*A radiocommunication service in which signals transmitted or retransmitted by space stations are intended for direct reception by the general public...the term ‘direct reception’ shall encompass both individual reception and community reception.*⁴

In the DBS Notice, the FCC proposes to eliminate the separate rule Part 100 for DBS, consolidate the rules into Part 25 for satellite services generally, and make certain modifications to the DBS rules. In particular, the Commission proposes to amend the definition of DBS to

³ The WTO Basic Telecom Agreement is incorporated into the General Agreement on Trade in Services (“GATS”) by the Fourth Protocol to the GATS, April 30, 1996, 36 I.L.M. 366 (1997) (“Fourth Protocol to the GATS”).

⁴ International Telecommunication Union Radio Regulations, S1.39 (Geneva 1995) (former RR 37) (emphasis in the original).

include a “reference to the frequencies used by the DBS service” in a new Section 25.201.⁵ The addition of frequencies to the definition is “to distinguish application of the DBS rules from the rules for other satellite services in Part 25, including” direct-to-home, fixed satellite services (“DTH-FSS”).⁶

The Coalition agrees that the Commission’s proposed rules must maintain certain distinctions between DBS and other satellite services. Thus, if all satellite services, including DBS, are to be governed by Part 25, the new rules must make certain that non-DBS services, regardless of frequency, are not inadvertently affected by rules intended only for DBS or DTH-FSS. Accordingly, the Commission should clarify that its proposed change to the definition of DBS is intended to narrow, rather than expand, the types of services that will be regulated as DBS under the proposed Section 25.201. Moreover, DBS and non-DBS services should be distinguished on the basis of the services offered, and not the facility, frequency or orbital location from which they are provided.

The Coalition submits that defining DBS service on the basis of functionality rather than frequency would provide regulatory certainty to operators and promote several public interest objectives:

Promotion of Competition. Narrowly construing the definition of DBS would maximize competition for non-DBS satellite services in the U.S. and international marketplace. As a result of U.S. leadership in international trade, seventy countries made market-opening commitments in the WTO Basic Telecom Agreement to eliminate or reduce telecommunications monopolies and

⁵ DBS Notice at ¶ 19.

⁶ *Id.*

foreign investment limitations. The U.S. strongly advocated competition in various telecommunications service markets. Thus, the U.S. commitments included only a limited reservation for DBS, DTH-FSS and Digital Audio Radio Services,⁷ prompted in part by the inability to resolve issues regarding these specific services in the allotted time. A frequency-based definition of DBS could inadvertently broaden the exception to include *all* services offered in the frequencies listed in the proposed DBS definition, at the cost of the agency's existing flexible-use policies. In contrast, a narrow service-based definition would recognize the potential for non-DBS services to be delivered by a variety of satellite facilities, regardless of frequency. This would provide substantial benefits for U.S. consumers by maximizing competition in U.S. and foreign telecommunications markets for all non-DBS satellite services consistent with the United States' commitment in the WTO Basic Telecom Agreement.⁸

Spectrum Efficiency. A narrow, service-based definition of DBS would maximize spectrum efficiency by encouraging the use of DBS frequencies to deliver a wide range of permissible services to the public. Indeed, the FCC routinely permits licensees to offer services ancillary to those central to the allocation. Early in the regulation of DBS, the Commission

⁷ Fourth Protocol to the GATS, *supra* note 3, United States - Schedule of Specific Commitments.

⁸ The Commission has stated that its continuing goal is "to foster development of innovative satellite communications services for U.S. consumers through fair and vigorous competition among multiple service providers, including foreign-licensed satellites." *Satellite Services Order*, 12 FCC Rcd 24094, 24098 (1997) ("Report and Order"). Moreover, narrowly construing the scope of DBS would be consistent with customary principles of interpreting a treaty in "light of its object and purpose" – in this case maximization of competition in the global telecommunication service markets. *See, e.g.*, Vienna Convention on the Law of Treaties, art. 31 (General Rule of Interpretation), U.N. Doc. A/CONF.39/27, 63 A.J.I.L. 875, 8 I.L.M. 679 (1969). While the U.S. is not a signatory to this Treaty, as a matter of custom, the U.S. applies the principles contained in the Vienna Convention to interpret treaties.

confirmed that permittees would be allowed to provide “non-conforming” services including data, voice communications and other services that did not constitute the “transmission of direct-to-home video entertainment programming.”⁹ The Commission reasoned that allowing the distribution of non-DBS services would foster the development of DBS.¹⁰ Similarly, the Commission has authorized cellular providers to offer fixed services,¹¹ Qualcomm to use FSS for its “Omnitracks” mobile offering,¹² and American Mobile Satellite Corporation to supply fixed services in a mobile allocation.¹³

Maintaining the current DBS service-based definition would preserve the agency’s preference for flexible regulation of satellite service providers. Further, by ensuring that non-DBS services are not burdened by DBS-specific rules, the Commission would maximize the types of services that DBS platforms could provide, which would enhance the viability of new satellite services and promote innovation.

⁹ *United States Satellite Broadcasting Company, Inc.*, 1 FCC Rcd 977 (1986). The Commission recognized the differences between DBS, which relies upon ubiquitous small antennas to deliver services direct-to-home, and FSS, which serves relatively few receive points. *Id.* at 979.

¹⁰ *Id.*

¹¹ *Amendment of Subpart K, Part 22 of the Commission’s Rules to Facilitate the Development of Cellular Radio Telecommunications Service in the Rural Areas of the Country*, 102 F.C.C.2d 470 (1985); *Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, 11 FCC Rcd 8965 (1996).

¹² *Qualcomm, Inc.*, 4 FCC Rcd 1543 (1989); see also *Mobile Satellite-Based Communications Services by Crescomm Transmission Services, Inc. and Qualcomm Incorporated*, 11 FCC Rcd 10944 (1996).

¹³ *Land Mobile Satellite Services*, 2 FCC Rcd 6830, 6835 n.43 (1987).

Consistent Application of U.S. Policy. The U.S. historically has eschewed a frequency-based approach to categorizing satellite services. For example, the U.S. recently opposed a plan by INTELSAT to define DTH-FSS services on the basis of frequency and orbital location, rather than the nature of the service to be provided.¹⁴ Similarly, the U.S.’ commitment under the WTO Basic Telecom Agreement contained a limited exemption for DBS and DTH-FSS television “services,” without reference to the particular frequencies over which these services might be offered.¹⁵ The Commission should confirm that the proposed definition of DBS is not intended to depart from the agency’s fundamental approach of defining and regulating a satellite service according to the nature of the service and not the frequency used to provide it.

II. Conclusion

The FCC should clarify that the proposed definition of DBS is intended to avoid the inadvertent application of DBS service rules to non-DBS services without regard to frequency. The Coalition urges the Commission to retain its current service-based definition of DBS. By ensuring that DBS-specific service rules apply only to DBS, the Commission will maximize competition and promote flexibility for satellite operators to provide new and innovative services without unnecessary regulatory burdens.

¹⁴ Specifically, the U.S. objected to a proposal from INTELSAT to treat a planned DTH-FSS service as a “public” rather than “specialized” service under the INTELSAT Agreement solely because the INTELSAT K satellite did not operate on DBS-specific frequencies at an assigned DBS orbital slot.

¹⁵ Fourth Protocol to the GATS, *supra* note 3, United States - Schedule of Specific Commitments.

Respectfully submitted,

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